

UNITED STATES OF AMERICA,

Plaintiff,

v.

WASHINGTON GOLF AND  
COUNTRY CLUB,

Defendant.

Civil Action No.

CONSENT DECREE

A. This Consent Decree is made and entered into by and between the United States of America (“United States”), on behalf of the Secretary of the United States Department of the Interior acting through the National Park Service (“NPS”) and the U.S. Fish and Wildlife Service (“USFWS”), and the Washington Golf and Country Club (the “Settling Defendant”).

B. The United States has filed a complaint in this action concurrent with the lodging of this Consent Decree alleging that Settling Defendant is liable for natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a)(4)(C) (“CERCLA”), and the Federal Water Pollution Control Act, 33 U.S.C. § 1321(f) (“CWA”), and for damages resulting from the destruction, loss, or injury to park system resources under the Park System Resources Protection Act, 16 U.S.C. § 1911-1(a) (“PSRPA”).

C. The Complaint against Settling Defendant seeks restoration and compensation for alleged injuries and losses to natural resources and to park system resources, and to visitors in

the use of the park system arising from the alleged release of the soil fumigant Dazomet, and hazardous substances resulting from Dazomet's breakdown, including methyl isothiocyanate ("MITC"), from the grounds of Settling Defendant's golf course located on North Glebe Road in Arlington, Virginia, on or about August 23-24, 2001 (the "Release"). During this alleged Release, precipitation runoff containing these hazardous substances entered two tributaries to the Potomac River, known as Donaldson Run and Gulf Branch, that run through lands managed by the National Park Service as part of the George Washington Memorial Parkway downstream of Settling Defendant's golf course. The United States alleges that the Release resulted in significant injury to the aquatic ecosystems of Donaldson Run and Gulf Branch, including substantial mortality of fish and American eels and virtual elimination of smaller aquatic organisms immediately downstream of the release. Due to public safety concerns related to the Release, the NPS closed certain park areas frequented by visitors that are located near the affected tributaries. The NPS closed to the public two scenic overlooks on the George Washington Memorial Parkway for part of a weekend, and a section of the Potomac Heritage Trail for more than one week.

D. Pursuant to the National Contingency Plan, 40 C.F.R. Part 300, and Executive Order 12580, the President has delegated authority to act as Federal Trustees for natural resources injured by the Release to the Secretary of the Interior, acting through the National Park Service and the United States Fish and Wildlife Service in this case. The Federal Trustees have investigated injuries from the Release and assessed potential restoration efforts.

E. Settling Defendant has cooperated fully with the Federal Trustees in the identification and development of potential restoration activities to compensate for the damages alleged in the United States' complaint. Pursuant to this Consent Decree, Settling Defendant

will implement the Restoration Projects described in Appendix A to this Consent Decree, which Projects have been determined by the Trustees to provide for the restoration or the replacement of equivalent natural resources and park system resources and their services that were allegedly injured, destroyed, or lost as a result of the Release. Settling Defendant is also providing monetary compensation as part of the amount identified in Section VI, Paragraph 13, for the alleged loss of use of park resources by visitors.

F. The Parties understand and agree that Settling Defendant will begin implementation of the Restoration Projects prior to final approval of the Consent Decree in order to most effectively accomplish the goals of the restoration.

G. Settling Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint, nor does Settling Defendant admit any of the factual allegations in the Complaint or this Consent Decree.

H. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and implementation of this Consent Decree will expedite the restoration of natural resources and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. The Court has personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 16 U.S.C. § 19jj-2, 42 U.S.C. §§ 9607(a) and 9613(b), and 33 U.S.C. §§ 1321(e)(2) and (n). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), and 16 U.S.C. § 19jj-2 and 42 U.S.C. § 9613(b). For

purposes of this Consent Decree, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court and to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. APPLICABILITY OF CONSENT DECREE**

2. This Consent Decree applies to and is binding upon the United States, and upon Settling Defendant and its directors, employees, agents, successors and assigns. No change in ownership or corporate status or transfer of assets or real or personal property shall in any way alter Settling Defendant's rights or obligations under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Restoration Projects required by this Consent Decree and shall condition all contracts entered into hereunder upon performance of the Restoration Projects in conformity with the terms of the Consent Decree. Settling Defendant or its contractor shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Restoration Projects required by the Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Restoration Projects contemplated herein in accordance with this Consent Decree.

### **IV. DEFINITIONS**

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or the PSRPA or regulations promulgated thereunder shall have the meaning assigned to them in CERCLA or the PSRPA or such regulations. Whenever terms listed below are used in this Consent Decree or in appendices to this Consent Decree and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“CWA” shall mean the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387.

“Complaint” shall mean the civil complaint filed in this action by the United States concurrently with the lodging of this Consent Decree.

“Consent Decree” shall mean this document, all appendices attached hereto, and any modifications made pursuant to Section XX (Modifications). In the event of a conflict between this Decree and any appendix, this Decree shall control.

“Costs” shall mean, for the purposes of this Consent Decree, the costs incurred by the United States in assessing the natural resources and park system resources actually or potentially injured, destroyed, or lost as a result of the alleged Release, and oversight costs related to implementation of the Restoration Projects to be incurred by the Federal Trustees.

“Date of Entry” shall mean the date on which this Consent Decree is entered by the Clerk of Court after the United States has moved for entry and the District Court Judge has signed the Consent Decree.

“Date of Lodging” shall mean the date that this Consent Decree is lodged with the Clerk of Court.

“Day” shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“DOI” shall mean the United States Department of the Interior and any successor

departments or agencies of the United States.

“Federal Trustees” shall mean the National Park Service and the United States Fish and Wildlife Service of the United States Department of the Interior.

“Natural Resource Damages” shall mean, for the purposes of this Consent Decree, any damages recoverable by the United States under CERCLA or the CWA for injury to, destruction of, or loss of natural resources or loss of use or enjoyment thereof as a result of the Release, and any damages recoverable by the United States under the PSRPA for any destruction of, loss of, or injury to any park system resources or loss of use or enjoyment thereof as a result of the Release.

“NPS” shall mean the National Park Service of the United States Department of the Interior.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States and Settling Defendant.

“PSRPA” shall mean the Park System Resource Protection Act, 16 U.S.C. § 19jj.

“Release” shall mean the alleged release of Dazomet and its breakdown products from Settling Defendant’s golf course on or about August 23-24, 2001, as described more fully in the United States’ Complaint in this matter.

“Restoration Projects” shall mean both primary and compensatory restoration actions, as described and scheduled in Appendix A to this Consent Decree.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean the Washington Golf and Country Club.

“United States” shall mean the United States of America, acting on behalf of DOI (acting by and through the USFWS and NPS).

“USFWS” shall mean the United States Fish and Wildlife Service of the United States Department of the Interior.

## **V. NATURAL RESOURCE DAMAGE RESTORATION REQUIREMENTS**

5. This Consent Decree sets forth the terms upon which the United States and Settling Defendant agree to settle the United States’ claims for Natural Resource Damages and Costs.

6. Settling Defendant shall restore or replace, as described in this Consent Decree, natural resources injured by the Release. Settling Defendant shall satisfy this obligation by completing the Restoration Projects as set forth in Appendix A.

7. Where implementation of any portion of the Restoration Projects requires a federal, State or local permit, certification or approval, Settling Defendant shall ensure timely and complete applications are submitted and will take all other steps necessary to obtain such permit, certification or approval, where required. This Decree is not and shall not be construed to be a permit issued pursuant to any federal or State statute or regulation, nor shall it be construed in any way to affect any past, current or future obligation of Settling Defendant or any other person or entity to comply with any federal, State or local law.

8. Within 45 days of completion of the Restoration Projects, Settling Defendant shall prepare and submit to the Federal Trustees a report describing the work performed and any problems encountered in performing the work. This report will be subject to the review and approval of the Federal Trustees.

9. If the Federal Trustees determine that modification to the Restoration Projects as implemented is necessary to carry out and maintain the restoration set forth in Appendix A, the Federal Trustees may require that Settling Defendant implement such modification; provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the restoration set forth in Appendix A. If Settling Defendant objects to any modification determined by the Federal Trustees to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section X (Dispute Resolution). Appendix A shall be modified in accordance with final resolution of the dispute. Settling Defendant shall implement any work required by any modifications incorporated into Appendix A in accordance with this Paragraph. If Settling Defendant requests an extension of time due to such modification, it shall be granted at the discretion of the Federal Trustees, in accordance with Section XX (Modification), and an extension by the Federal Trustees shall not be unreasonably withheld.

10. Upon the Federal Trustees' determination, following the monitoring period required by Appendix A, that the Restoration Projects have been implemented as required in Appendix A, the Federal Trustees shall provide Settling Defendant with a written statement certifying completion of the Restoration Projects ("Certificate of Completion").

11. Notwithstanding any action by the United States, including, without limitation, its review and approval of any design, plan, report, or other information or action formulated by Settling Defendant under this Consent Decree, Settling Defendant is and shall remain solely responsible for compliance with all terms and requirements of this Consent Decree, including those related to success criteria.



12. If by the 31<sup>st</sup> day after entry of this Consent Decree, Settling Defendant has not substantially completed the physical, on-site construction required by Appendix A, Settling Defendant shall establish and maintain financial security in the amount of \$100,000 in the form of a surety bond, letter of credit, or other financial undertaking deemed satisfactory by the United States, guaranteeing performance of the Restoration Projects, and shall provide the United States with a copy of such instrument. If financial security is required to be posted as set forth above, then upon satisfactory completion of physical, on-site construction, the amount of financial security may be reduced by agreement of the Parties to correspond to the estimated costs of the remaining monitoring work or eliminated if that cost is reasonably projected to be less than \$20,000.

#### **VI. PAYMENTS BY SETTLING DEFENDANT**

13. Payment of Costs. Settling Defendant shall pay the United States \$145,000.00, in two installments, in reimbursement of the United States' natural resource damage assessment and response costs and for the cost of the Federal Trustees' oversight of the Restoration Projects, and in compensation for the loss by visitors of the use of the affected park resources. Payment shall be made as set forth below in this Paragraph 13.

a. First Installment Payment. No later than 30 days after the Date of Entry, Settling Defendant shall pay the United States an initial installment payment of \$72,500.00 in accord with subsection c. below.

b. Second Installment Payment. No later than 30 days after the first anniversary of the Date of Entry, Settling Defendant shall pay the United States an additional installment payment of \$72,500.00 in accord with subsection c. below.

c. Payments shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2005v01060 and DOJ case number 90-11-2-08028. Payment shall be made in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Virginia following lodging of the Consent Decree. Any EFTs received at the U.S. DOJ lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day. On the day that the transfer is made, Settling Defendant shall send evidence of the transfer along with correspondence referencing this Consent Decree and the DOJ Case Number 90-11-2-08028 and the civil action case name and number to:

Department of the Interior  
Natural Resource Damage Assessment and Restoration Program  
Attn: Restoration Fund Manager  
1849 C Street, N.W.  
Mail Stop 4449  
Washington, D.C. 20240

and to:

Mark Barash  
Office of the Regional Solicitor  
U.S. Department of the Interior  
One Gateway Center, Suite 612  
Newton Corner, MA 02458-2868.

and to:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
DOJ Ref. No. 90-11-2-08028

All payments made pursuant to this Paragraph shall be credited to DOI's Natural Resource Damage Assessment and Restoration Trust Fund.

d. In the event that any payment required by Paragraph 13.a. or b. above is not made by the specified date, Settling Defendant shall pay interest on the unpaid balance. Interest shall begin to accrue commencing on the 31st day after the Date of Entry and continue to accrue through the date of payment in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. All accrued interest shall be paid at the time the principal amount of Costs is paid.

## **VII. NOTICES**

14. Whenever under the terms of this Consent Decree notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses specified below, unless it is otherwise specifically provided in this Consent Decree. Any communication to be directed to the Federal Trustees shall be directed to each of the representatives of the United States identified below. Any change in the individuals designated by any Party must be made in writing to the other Parties. All notices shall be sent by first-class mail. All notices and submissions shall be considered effective upon receipt by mail, unless otherwise provided.

### **As to the United States Department of Justice:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611  
DOJ Ref. No. 90-11-2-08028

### **As to the National Park Service:**

Josefa O'Malley  
Division of Parks & Wildlife  
Office of the Solicitor  
U.S. Department of the Interior  
1849 "C" Street, N.W. MS-3211  
Washington, DC 20240

and

David Anderson  
Damage Assessment Case Officer  
National Park Service  
77 Forsyth Street, S.W. Suite G-4  
Atlanta, GA 30303

As to the U.S. Fish and Wildlife Service:

Mark Barash  
Office of the Regional Solicitor  
U.S. Department of the Interior  
One Gateway Center, Suite 612  
Newton Corner, MA 02458-2868

and

John Schmerfeld  
U.S. Fish and Wildlife Service  
Virginia Field Office  
6669 Short Lane  
Gloucester, VA 23061

As to Settling Defendant:

Russell V. Randle, Esq.  
Patton Boggs LLP  
2550 M Street, N.W.  
Washington, DC 20037  
(Outside Counsel to WGCC)

President  
Washington Golf & County Club  
3017 N. Glebe Road  
Arlington, VA 22207

**VIII. INDEMNIFICATION AND INSURANCE**

15. The United States does not assume any liability by entering into this Consent Decree. Settling Defendant shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its employees, agents, contractors, subcontractors, and any

person acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Further, Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendant, its employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any such contractor of Settling Defendant shall be considered an agent of the United States.

16. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of constructing the Restoration Projects, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify, save, and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of the Restoration Projects including, but not limited to, claims on account of construction delays.

17. Within 30 days of entry of the Consent Decree, Settling Defendant shall include the United States as an additional insured on its existing comprehensive general liability insurance policy, and shall maintain such insurance and the United States as an additional insured until the first anniversary of the Certificate of Completion pursuant to Paragraph 10. In

addition, until the Certificate of Completion pursuant to Paragraph 10 is issued, Settling Defendant shall satisfy, or shall ensure that its contractors and/or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Restoration Projects on behalf of Settling Defendant in furtherance of this Consent Decree. Settling Defendant shall provide to the United States certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to the United States that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

#### **IX. FORCE MAJEURE**

18. "Force majeure," for the purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractor, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation, except the obligations to make payments described in Section VI of this Consent Decree shall not be subject to force majeure. The requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes using the best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial inability to conduct the

Restoration Projects.

19. If any circumstance occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by force majeure, Settling Defendant shall orally notify the United States within 48 hours of the time that Settling Defendant first knew or should have known that the circumstances might cause a delay. Within 5 days thereafter, Settling Defendant shall provide in writing to the United States a detailed description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay; Settling Defendant's rationale for attributing such a delay to a force majeure if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Defendant, such circumstances may cause or contribute to an endangerment to public health or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that circumstance for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstances of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractor knew or should have known.

20. If the United States agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the United States for such time as is necessary to complete the obligations. Any extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other

obligation. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure, the United States will notify Settling Defendant in writing of its decision. If the United States agrees that the delay is attributable to a force majeure, the United States will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

21. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of the United States' notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 18 and 19, above. If Settling Defendant carries this burden, the delay at issue shall not be deemed to be a violation by Settling Defendant of the affected obligations of this Consent Decree identified to the United States and the Court.

#### **X. DISPUTE RESOLUTION**

22. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by Plaintiff to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

23. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations between Plaintiff and Settling Defendant. The dispute shall



be considered to have arisen when Settling Defendant sends Plaintiff a written notice of dispute. Such notice of dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty-one (21) days from the date the dispute arises, unless that period is modified by written agreement. If informal negotiations are unsuccessful, then Plaintiff's position shall control unless Settling Defendant files with the Court a petition to resolve the dispute within thirty (30) days after the conclusion of the informal negotiation period. In any dispute under this Paragraph, Settling Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and with the applicable provisions of CERCLA, the CWA, and the PSRPA, and that Settling Defendant is entitled to relief under applicable law. The United States may argue that its position is reviewable only on the record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

24. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 29, below. If Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

#### **XI. STIPULATED PENALTIES**

25. Settling Defendant shall be liable for Stipulated Penalties to the United States for \$500 per violation of this Consent Decree per day as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree (including Appendix A), according to all applicable requirements of this

Decree (including Appendix A), and within the specified time schedules established by or approved under this Decree (including Appendix A).

26. All penalties shall begin to accrue on the day after Settling Defendant should have performed an obligation specified in the previous Paragraph and shall continue to accrue through the day Settling Defendant complies with the obligation. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree.

27. All penalties due under this Section shall be due and payable within thirty (30) days of Settling Defendant's receipt of a demand for payment from the United States, unless Settling Defendant invokes dispute resolution under Section X of this Consent Decree. If Settling Defendant invokes dispute resolution under Section X, then stipulated penalties shall be due as specified in Paragraph 29.

28. All payments to the United States under this Section shall be paid by certified check made payable to "U.S. Treasury." This payment shall be mailed to the U.S. Attorney's Office, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, VA 22314, referencing "U.S. v. Washington Golf and Country Club," USAO File Number: 2005v01060; DOJ Case No. 90-11-2-08028, and the name and address of the party making payment. Copies of the check and notice shall be sent to the United States as specified in Section VII (Notices).

29. Stipulated Penalties shall continue to accrue as provided in Paragraph 24, above, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30)

days of the effective date of that agreement;

b. If the dispute is submitted to the Court and Plaintiff prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph c, below;

c. If any Party appeals the District Court's decision, Settling Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) days of receiving the final appellate court decision.

30. In the event Settling Defendant fails to pay stipulated penalties when due, the United States may institute a legal proceeding to collect such penalties, as well as interest accruing on any unpaid balance, as provided by law.

31. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due under this Consent Decree.

32. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree.

## **XII. COVENANTS NOT TO SUE BY THE UNITED STATES**

33. In consideration of the satisfactory performance by Settling Defendant of all of its obligations under this Consent Decree, and except as provided in Paragraph 34, the United States hereby covenants not to sue or to take administrative action against Settling Defendant for Costs or Natural Resource Damages. For the payment of Costs, this covenant not to sue shall take effect upon receipt by the United States of both installment payments due pursuant to Paragraph 13 of this Consent Decree. With respect to all other obligations under this Consent Decree, these

covenants not to sue shall take effect upon the issuance of the Certificate of Completion by the United States pursuant to Paragraph 10 and the receipt by the United States of all payments due pursuant to Section VI (Payment by Settling Defendant) and Section XI (Stipulated Penalties), whichever occurs last. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant and do not extend to any other person.

### **XIII. RESERVATION OF RIGHTS BY THE UNITED STATES**

34. Nothing in the Consent Decree is intended to be, nor shall be construed as, a release from liability or a covenant not to sue for any claim or cause of action, administrative or judicial for the following:

- a. Settling Defendant's failure to pay the United States' Costs, to complete the Restoration Projects, or to comply with any other obligation or requirement of this Consent Decree;
- b. Claims brought on behalf of the United States, including Federal agencies, for costs, damages, and expenses of any sort, other than for Costs and Natural Resource Damages that are the subject of this Consent Decree;
- c. Past, present, or future releases, discharges, or spills of hazardous substances other than the Release described in this Consent Decree;
- d. Liability for violations of Federal law which occur during or incident to the implementation of the Restoration Projects; and
- e. Any and all criminal liability.

35. Notwithstanding any other provision of this Consent Decree, Plaintiff reserves the right to institute proceedings against Settling Defendant in this action or in a new action seeking

recovery of Natural Resource Damages resulting from the Release based on (1) conditions unknown to the United States as of the date of lodging of this Consent Decree that contribute to the injury to, destruction of, or loss of natural resources; or (2) new information received by the United States after the date of lodging of this Consent Decree which indicates there is injury to, destruction of, or loss of resources of a type unknown to the United States as of the date of execution of this Consent Decree.

36. The failure of the United States to insist upon strict and prompt performance of any provision of this Consent Decree shall not operate as a waiver of any requirement of this Consent Decree or of the United States' right to insist on prompt compliance in the future with such provision, and shall not prevent a subsequent action by the United States to enforce such a provision.

37. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

#### **XIV. COVENANTS BY SETTLING DEFENDANT**

38. Settling Defendant hereby covenants not to sue and agrees not to assert any claim or cause of action against the United States, or its employees, representatives or contractors, with respect to the Release, this Consent Decree, any payments made under this Consent Decree, the Restoration Projects, or the United States' oversight or approval of the Restoration Projects, including, but not limited to, any claims under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, Sections 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9611, 9612, & 9613, or at common law.

39. Settling Defendant hereby covenants not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States

notifies it in writing that it no longer supports entry of the Consent Decree.

#### **XV. EFFECT OF SETTLEMENT**

40. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to Natural Resource Damages or Costs against any person not a Party hereto.

41. Contribution Protection. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or other applicable law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Natural Resource Damages and Costs.

42. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, statute of limitations, or other defenses based upon any contention that the claim raised by the United States in subsequent proceedings were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XII (Covenants Not to Sue by the United States).

#### **XVI. CERTIFICATION**

43. Settling Defendant certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the United States all information requested by the United States that is currently in the possession of Settling Defendant or its officers, employees, contractors, or agents.

#### **XVII. ACCESS TO INFORMATION**

44. Settling Defendant shall provide to the United States, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the Release or to the implementation of this Consent Decree. Settling Defendants shall also make available to the United States, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the implementation of the Restoration Projects.

#### **XVIII. COMPLIANCE WITH OTHER LAWS**

45. This Consent Decree shall not be construed in any way to relieve Settling Defendant or any other person or entity from the obligation to comply with any Federal, State, or local law.

#### **XIX. RETENTION OF JURISDICTION**

46. The Court shall retain jurisdiction of this matter for the purpose of entering such further order, direction, or relief as may be necessary or appropriate for the construction, implementation, resolution of disputes, or enforcement of this Consent Decree.

#### **XX. MODIFICATION**

47. Any modification that materially alters a requirement of this Consent Decree must be approved by the Court.

48. Any modification to the Consent Decree, including Appendix A thereto, that does not materially alter a requirement of this Consent Decree may be authorized by written agreement between the United States and Settling Defendant, or in accordance with the dispute resolution process as provided in Section X (Dispute Resolution).

#### **XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

49. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to a thirty-day (30) period for public notice and comment in accordance with U.S. Department of Justice policy and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

#### **XXII. VOIDABILITY**

50. If for any reason the District Court should decline to approve entry of this Consent Decree in the form presented, or if the United States withdraws its consent pursuant to Section XVI, this Consent Decree and the settlement embodied herein shall be voidable by written notice to the other Party at the sole discretion of any Party to this Consent Decree, and the terms hereof may not be used as evidence in any litigation.

#### **XXIII. TERMINATION**

51. Settling Defendant may serve upon the United States a request to terminate the Consent Decree after Settling Defendant has made all payments required by this Consent Decree and the United States has issued the Certificate of Completion, pursuant to Paragraph 10.



52. If the United States does not agree that the Decree may be terminated, Settling Defendant may invoke Dispute Resolution under Section X of this Decree. However, Settling Defendant shall not seek Dispute Resolution of any dispute, under Section X, until ninety (90) days after service of its request for termination.

53. Termination of this Consent Decree shall not affect the covenants, reservations, and effects of settlement set forth in Section XII (Covenants Not to Sue by the United States); Section XIII (Reservation of Rights by the United States); Section XIV (Covenants by Settling Defendant); and Section XV (Effect of Settlement).

#### **XXIV. SIGNATORIES/SERVICE**

54. Each undersigned representative of Settling Defendant and the Acting Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Deputy Section Chief of the Environmental Enforcement Section of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

55. Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable rules of this Court, including, but not limited to, service of a summons.

56. This Consent Decree may be executed in counterparts and, as executed, shall constitute one agreement, binding on both of the Parties hereto.

**XXV. APPENDIX**

57. The following appendix is attached to and incorporated into this Consent Decree: “Appendix A” is the Stream Habitat Enhancement Plan for Donaldson Run and Gulf Branch (dated August 11, 2005).

**XXVI. FINAL JUDGMENT**

58. This Consent Decree and its Appendix constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those contained expressly in this Consent Decree and its Appendix.

59. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendant.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Washington Golf and Country Club.

FOR THE UNITED STATES OF AMERICA:

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W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

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A. KENT MAYO  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

PAUL J. McNULTY  
United States Attorney  
Eastern District of Virginia

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RICHARD W. SPONSELLER  
Assistant U.S. Attorney  
U.S. Attorney's Office  
2100 Jamieson Avenue  
Alexandria, VA 22314

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Washington Golf and Country Club.

FOR DEFENDANT WASHINGTON GOLF AND COUNTRY CLUB

Date: 8/31/2005

Signature

DAVID S. DODRICH, PRESIDENT  
Name (print)

3017 N. GLEBE RD.  
Address

ARLINGTON, VA 22207  
\_\_\_\_\_  
\_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print)

Address  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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